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EGMR Nr. 60899/00 - Urteil vom 2. November 2006 (Kobenter und Standard Verlags GmbH v. Österreich)

Beleidigung von Richtern durch Urteilsschelte (ein Urteil hebe sich nur "marginal von den Traditionen mittelalterlicher Hexenprozesse ab") und Meinungsfreiheit (Äußerungsfreiheit; Pressefreiheit; Verantwortlichkeit von Journalisten; hinreichende tatsächliche Basis für Werturteile [Abgrenzung zur Schmähkritik bzw. zur destruktiven Kritik]; konstitutive Bedeutung in der Demokratie; Rechtfertigung: Schutz der unabhängigen Gerichte; Überprüfung der Deutung von Aussagen seitens nationaler Gerichte durch den EGMR).

Art. 10 EMRK; Art. 5 GG; § 185 StGB; § 186 StGB; § 187 StGB; § 193 StGB

Leitsätze des Bearbeiters

1. Einschränkungen der Äußerungsfreiheit des Art. 10 EMRK sind im politischen Meinungsstreit und in Debatten über Fragen öffentlichen Interesses nur in geringem Maße hinzunehmen.

2. Der Presse kommt in der Demokratie eine grundlegende Bedeutung zu. Obwohl auch sie insbesondere die Rechte und die Ehre anderer sowie die daraus resultierenden Verpflichtungen respektieren muss, ist es ihre Pflicht, Informationen und Ideen zu allen Fragen des öffentlichen Interesses zu veröffentlichen. Sie muss in der Lage sein, ihre Rolle als "public watchdog" zu erfüllen.

3. Zur Freiheit der Presse gehört auch die Kritik an Gerichtsentscheidungen. Hierbei kann es indes erforderlich sein, das Vertrauen in die Gerichtsbarkeit gegen destruktive und haltlose Angriffe zu verteidigen. Haben herabsetzende Werturteile aber eine ausreichende tatsächliche Basis (hier: kritikwürdige Passage in einer Gerichtsentscheidung), darf kein allein destruktiver Angriff angenommen werden.

4. Die Meinungsfreiheit ist für die demokratische Gesellschaft von konstitutiver Bedeutung. Sie stellt eine der grundlegenden Voraussetzungen für ihre Fortentwicklung und die Selbstverwirklichung des Einzelnen dar. Ihr Schutzbereich umfasst auch Meinungen, die verletzen, schockieren oder beunruhigen.

5. Die Meinungsfreiheit kann ausnahmsweise eingeschränkt werden, jedoch sind die Ausnahmen eng auszulegen und das Bedürfnis für eine Einschränkung muss überzeugend dargelegt werden. Erforderlich kann eine Einschränkung gemäß Art. 10 II EMRK nur sein, wenn für sie ein dringendes gesellschaftliches Bedürfnis besteht. Für dessen Feststellung ist den Vertragsstaaten ein Beurteilungsspielraum zuzugestehen, der jedoch in Fragen öffentlichen Interesses eng bemessen ist und der Überprüfung durch den EGMR auch hinsichtlich der Gesetzesanwendung durch die nationale Rechtsprechung unterliegt

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THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first applicant, an Austrian national born in 1960 and living in Vienna, is an editorial journalist at the newspaper "Der Standard". The second applicant is the owner and publisher of this newspaper. 1

A. Background

9. On 26 October 1997 a group of homosexuals, the "Austrian Forum of Gays and Lesbians" ("Österreichisches Schwulen- und Lesbenforum", ÖSLF) held a demonstration in St. Pölten, at which the editors of the magazine "Der 13. - Zeitung der Katholiken für Glaube und Kirche" (The 13th - Newspaper of Catholics for Faith and Church) took pictures of participants and published them together with an article written by K. D. in its issue of 13 November 1997. That 2

article reflected a negative and hostile position towards homosexual relationships, suggesting, inter alia, that "they [homosexuals] ought to be disciplined 'gender-specifically' with whips and pizzles! (sie gehören 'geschlechtsspezifisch' mit Peitsche und Ochsenziemer zurechtgewiesen)" and that "nazi-methods should be applied to them!" It read further that "homosexuals now crawl like rats out of their holes and are fed 'lovingly' by politicians and church officials".

10. Subsequently 44 homosexual persons filed a private prosecution (Privatanklage) against the author K. D. for defamation and a compensation claim under the Media Act against the owner and publisher of "Der 13." 3

11. On 13 July 1998 the Linz Regional Court (Landesgericht) found that certain passages of the article constituted the offence of insult (Beleidigung) under Section 115 of the Criminal Code (Strafgesetzbuch) and ordered the owner and publisher of "Der 13." to pay compensation to four plaintiffs who could be identified on the pictures. It dismissed the compensation claim as regards the other plaintiffs and acquitted K. D. The court found that K. D. had not mentioned any of those plaintiffs' name in his article and that it could not be established that he had known that his text would be illustrated by these pictures. On pages 14-15 the judgment contained an excursus about the nature of homosexuality, referring to a book called "Lexicon of love (Lexikon der Liebe)" and the results of an opinion survey on this topic. It read, inter alia, that "in truth, homosexuality includes also the lesbian world and, of course, that of animals", which was followed by a long passage describing in detail examples of same-sex practices among different animals. 4

12. Subsequently, politicians and representatives of the Austrian Forum of Gays and Lesbians publicly criticised the deciding judge K.-P. B. for the text and style of this judgment, which was documented in a number of press releases by the Austrian Press Agency (APA) of 13 July, 1 and 2 September 1998, including an article published by "Der Standard" with the title "The judge and the dear cattle (Der Richter und das liebe Vieh)" on 1 September 1998. 5

13. On 2 September 1998 "Der Standard" published two articles written by the first applicant, whereby the first one referred to the commentary (Kommentar) at issue on page 32, which read as follows: 6

"The punishment chamber (Strenge Kammer)

Samo Kobenter

It is strange how often the avowed defenders of western values are inclined to adopt draconian methods when they feel them to be jeopardised by people with different beliefs, ideas or lifestyles. If a writer in some odd rag just says he would like to flog gay people or beat them with bulls' pizzles, that would not normally be worth mentioning, other than to say that everyone is entitled to live out his sexual fantasies and obsessions as he pleases, even in words, as long as the objects or subjects of his desires derive as much pleasure from it as he does.

Where such matters are being dealt with in court, however, we might expect at the end of the twentieth century that a judge of even minimal enlightenment would, at the very least, deliver a judgment that differs more than somewhat from the traditions of medieval witch trials. A judge in Linz, K.-P. B., has achieved the feat of acquitting a defendant who was given the benefit of the doubt although no doubt was apparent - on the contrary, the judge's reasoning handed the flogger enough arguments to justify the threats of punishment he had made so enthusiastically, even if only in writing. That flies in the face, for a start, of any conception of law which sees the courtroom as more than just a punishment chamber for all possible tendencies.

Lending support to a homophobe's venomous hate campaign with outrageous examples from the animal kingdom casts doubt on the intellectual and moral integrity of the judge concerned. The fact that public clarifications are now needed to the effect that homosexuals are not animals prompts concern about the state of this country."

14. On 18 September 1998 judge K.-P. B. decided that the above-mentioned excursus on pages 14-15 be taken out of the judgment of 13 July 1998. 7

15. Subsequently disciplinary proceedings were opened against judge K.-P. B. On 20 July 1999 the Innsbruck Court of Appeal (Oberlandesgericht), acting as disciplinary authority, imposed the disciplinary penalty of a warning. On 20 September 1999 the Supreme Court (Oberster Gerichtshof) confirmed this decision. 8

B. Defamation proceeding

16. In the meantime, judge K.-P. B. filed a private prosecution against the first applicant for defamation (Üble Nachrede) and a compensation claim under the Media Act against the second applicant on account of the above article published on 2 September 1998. 9

17. On 29 June 1999 the St. Pölten Regional Court convicted the first applicant of defamation under Section 111 §§ 1 and 2 of the Criminal Code and imposed a fine of ATS 13,500 (EUR 981) on him, suspended on one year's probationary period. It also ordered the second applicant to pay ATS 50,000 (EUR 3633) in compensation to judge K.-P. B. under Section 6 of the Media Act and to publish the judgment. It found in particular that the following statements were 10

capable of lowering judge K.-P. B. in the public esteem, constituting the slanderous reproach that he had violated his obligations under the law and the rules on professional conduct (Gesetzes- und Standespflichten), required of a judge:

a) the judgment delivered by the private prosecutor would only differ somewhat from the traditions of medieval witch trials (das vom Privatankläger gefällte Urteil würde sich nur "marginal von den Traditionen mittelalterlicher Hexenprozesse abheben") and

b) that judge K.-P. B. would lend support to a homophobe's venomous hate campaign with outrageous examples from the animal kingdom (und dieser würde "die geifernde Hetze eines Homophoben mit haarsträubenden Belegen aus dem Tierreich stützen").

18. The Court noted, inter alia, that even if the reasoning of that judgment contained irrelevant annotations, it could not be inferred from it that the private prosecutor K.-P. B. believed that different rights were accorded to homosexuals and heterosexuals, nor that he had compared homosexuals with animals or that he had put them on an equal footing. 11

19. On 11 November 1999 the applicants appealed against this judgment, claiming that the article at issue criticised exclusively the reasoning of the judgment and not the way in which judge K.-P. B. had conducted the trial. The statements were permissible value judgments based on facts and, thus, protected under Article 10 of the Convention. Arguing that journalistic liberty also allowed a certain degree of exaggeration and even provocation, and considering the public discussion caused by the reasoning of the judgment not only in various media but also among judges, the polemical style of the article was not disproportionate either. 12

20. On 16 February 2000 the Vienna Court of Appeal dismissed the applicants' appeal and confirmed the Regional Court's judgment. It found that an average reader, interested in the subject-matter, would understand by the first statement that the private prosecutor had grossly violated fundamental procedural rights, such as the principles of impartiality and adversarial hearings, which were regularly breached in medieval witch trials. Thus, this reproach of violating the rules on professional conduct required of a judge consisted in concrete facts, which were not proved true by the records of the trial. The second statement was not only a value judgment, but also insinuated that judge K.-P. B. had sided with the accused K. D. and had, thus, been partial. As it was not mentioned in the article that judge K.-P. B. had impartially conducted the trial and that only certain passages of the judgment were subject to that criticism, the statements could not be considered as value judgments based on facts. Rather, in their context, they were disparaging statements of facts, falling outside the scope of protection of Article 10 of the Convention. Since certain passages of the above judgment proved to be legally superfluous, as affirmed by the private prosecutor's decision of 18 September 1998 taking them out, they could have been subject to (fair) comment. 13

II. RELEVANT DOMESTIC LAW

21. Section 6 § 1 of the Media Act provides for the strict liability of the publisher in cases of defamation; the victim can thus claim damages from him. In this context "defamation" has been defined in Section 111 of the Criminal Code (Strafgesetzbuch), as follows: 14

"1. As it may be perceived by a third party, anyone who makes an accusation against another of having a contemptible character or attitude, or of behaving contrary to honour or morality, and of such a nature as to make him contemptible or otherwise lower him in public esteem, shall be liable to imprisonment not exceeding six months or a fine (...)

2. Anyone who commits this offence in a printed document, by broadcasting or otherwise, in such a way as to make the defamation accessible to a broad section of the public, shall be liable to imprisonment not exceeding one year or a fine (...)

3. The person making the statement shall not be punished if it is proved to be true. As regards the offence defined in paragraph 1, he shall also not be liable if circumstances are established which gave him sufficient reason to assume that the statement was true."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

22. The applicants complained that the Austrian courts' judgments convicting the first applicant of defamation under Section 111 §§ 1 and 2 of the Criminal Code and imposing a fine of EUR 981 and ordering the second applicant to pay EUR 3,633 by way of compensation violated their right to freedom of expression under Article 10, which, as far as material, reads as follows: 15

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. (...)

2 . The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such

formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Whether there was an interference

23. The Court notes that it is common ground between the parties that the first applicant's conviction and the order issued against the second applicant to pay compensation constituted an interference with their right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. 16

B. Whether the interference was justified

24. An interference contravenes Article 10 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims referred to in paragraph 2 and is "necessary in a democratic society" for achieving such an aim or aims. 17

1. "Prescribed by law"

25. The Court considers, and this was acknowledged by the parties, that the interference was prescribed by law, namely by Article 111 of the Criminal Code and Section 6 of the Media Act read in conjunction with that provision respectively. 18

2. Legitimate aim

26. The Court further finds, and this was likewise not disputed between the parties, that the interference served a legitimate aim, namely "the protection of the reputation or rights of others" within the meaning of Article 10 § 2 of the Convention. 19

3. "Necessary in a democratic society"

(a) Arguments before the Court

27. The Government submitted that the measures were necessary in a democratic society and the Austrian courts gave sufficient and convincing reasons for their judgments. In particular they found that the impugned statements constituted untrue statements of fact, namely the reproach against the judge that he had failed to take into account fundamental procedural guarantees and that he had violated the principles of impartiality and an adversarial hearing. The allegations were not admissible value judgments either as they lacked a sufficient factual basis. In particular, it did not emanate from the article at issue that the judge had conducted the proceedings in an objective manner, relying on the existing facts, and that only one passage of the reasoning was intended to be criticised. Moreover, the details of the impugned judgment and the circumstances underlying the previous criminal proceedings were certainly not known to the general public to an extent required for such serious accusations against a judge, including an attack on the reputation of the judiciary. When balancing the parties' interests, namely the applicants' interest in disseminating information and ideas on matters of public interest on the one hand, and the interest of the judge concerned in protecting his reputation and the standing of the judiciary in general on the other, the courts found in favour of the latter interests. Furthermore, in the light of the case as a whole and the economic situation of the applicants, the sanctions imposed were also proportionate. 20

28. The applicants contested that the Austrian courts' judgments had been necessary in a democratic society. They contended that the impugned statements constituted value judgments which had a factual basis, namely the reasoning of the judgment concerned. This factual basis was also known to the readers because it had been published on several occasions, including by "Der Standard" in its issue of 1 September and another article on 2 September 1998 which explicitly referred to the commentary at issue on page 32. Further, the domestic courts as well as the Government had disregarded that the article was earmarked as a "commentary", thus, indicating to any knowledgeable reader that it contained a critical assessment by the author. In the applicants' view, the courts had also ignored that the impugned statement only concerned the judgment of the private prosecutor and not the way in which he had conducted the proceedings. Therefore the applicants did not share the argument of the Government and the findings of the domestic courts that they had reproached the judge with not having observed the principle of an adversarial hearing or with having been partial. Moreover, they considered the Government's view to be inconclusive and overstepping the requirements of this Court's case-law in respect of Article 10 of the Convention that their critical remarks should have contained the fact that the proceedings had been (otherwise) conducted in a fair manner. In conclusion, the applicants' convictions were disproportionate and not necessary in a democratic society. 21

b) The Court's assessment

29. The Court reiterates the principles established by its case-law under Article 10 of the Convention: 22

(i) The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest (see De Haes and Gijsels v. Belgium, judgment of 24 February 1997, Reports 1997-I, pp. 233-234, § 37). Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see Thorgeir Thorgeirson v. Iceland, judgment of 25 June 1992, Series A no. 239, p. 28, § 63; Bladet Tromsø and Stensaas v. Norway [GC], no. 21980/93, § 62, ECHR 1999-III; and Unabhängige Initiative Informationsvielfalt v. Austria, no. 28525/95, § 46, 26 February 2002).

(ii) This undoubtedly includes questions concerning the functioning of the system of justice, an institution that is essential for any democratic society. The press is one of the means by which politicians and public opinion can verify that judges are discharging their heavy responsibilities in a manner that is in conformity with the aim which is the basis of the task entrusted to them. Regard must, however, be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against destructive attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying (see Prager and Oberschlick v. Austria, judgment of 26 April 1995, Series A no. 313, p. 17, § 34).

(iii) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. As set forth in Article 10 § 2, this freedom is subject to exceptions, which must, however, be construed strictly and the need for any restrictions must be established convincingly (see Nilsen and Johnsen v. Norway [GC], no. 23118/93, § 43, ECHR 1999-VIII).

(iv) There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see Sürek v. Turkey (No. 1) [GC], no. 26682/95, § 61, ECHR-IV).

(v) The notion of necessity implies a "pressing social need". The Contracting States enjoy a margin of appreciation in this respect, but this goes hand in hand with a European supervision which is more or less extensive depending on the circumstances. In reviewing under Article 10 the decisions taken by the national authorities pursuant to their margin of appreciation, the Convention organs must determine, in the light of the case as a whole, whether the interference at issue was "proportionate" to the legitimate aim pursued and whether the reasons adduced by them to justify the interference are "relevant and sufficient" (see Lingens, cited above, p. 25, §§ 39-40; and The Sunday Times v. the United Kingdom (no. 2), judgment of 26 November 1991, Series A no. 217, p. 28-29, §§ 50).

(vi) The nature and severity of the penalty imposed are also factors to be taken into account when assessing the proportionality of the interference (see, for example, Ceylan v. Turkey [GC], no. 23556/94, § 37, ECHR 1999-IV; Tammer v. Estonia, no. 41205/98, § 69, ECHR 2001-I; and Perna v. Italy [GC], no. 48898/99, § 39, 25 July 2001).

30. Turning to the circumstances of the present case and having regard to the above principles, the Court considers, 23
unlike the Government and the domestic courts, that the commentary at issue, in particular the impugned passages constituted value judgments, which had a sufficient factual basis for the purposes of Article 10. Firstly, the reasoning of the judgment concerned had been harshly criticised in the public media, including in "Der Standard" in two other articles, one published on a different page the same day as the commentary at issue and the other already the day before. Secondly, the statement "the judgment delivered by the private prosecutor would only differ somewhat from the traditions of medieval witch trials" made sufficiently clear that the criticism concerned the judgment and not, as the domestic courts and the Government found, alleged deficiencies by the judge in conducting the proceedings.

31. The Court finds that the issue concerned a matter of public interest at the time. However, unlike the Government 24
and the domestic courts, which balanced the interests of the involved parties in favour of the judge's interest in protecting his reputation and the standing of the judiciary in general, the Court considers that the applicants' interest in disseminating information on the subject-matter, admittedly formulated in a provocative and exaggerated tone, outweighed the interests of the former in the circumstances of the case. The facts that those passages of the judgment concerned had later on been taken out by the judge himself, and secondly, that a warning had been imposed on that judge in subsequent disciplinary proceedings prove that that judge had not discharged the heavy responsibilities in a manner that was in conformity with the aims entrusted to judges (see e contrario, Prager and Oberschlick, cited above). The Court therefore finds that the applicants complied with their duties, responsibilities and diligence as a public "watch-dog" and that the criticism did not amount to any unjustified destructive attacks against the judge concerned or the judiciary as such (ibidem).

32. Therefore the Court considers that the standards applied by the Austrian courts were not compatible with the principles embodied in Article 10 and that the domestic courts did not adduce "relevant and sufficient" reasons to justify the interference at issue, namely the first applicant's conviction for defamation and the imposition of a fine on the applicant company for having made the critical statements in question. Having in mind that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest, the Court finds that the domestic courts overstepped the narrow margin of appreciation accorded to Member States, and that the interference was disproportionate to the aim pursued and was thus not "necessary in a democratic society". 25

33. In conclusion, the Court finds that the Austrian courts, when convicting the first applicant and ordering the second applicant to pay compensation, overstepped their margin of appreciation, and that these measures were not necessary in a democratic society. There has, therefore, been a violation of Article 10 of the Convention. 26

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. Article 41 of the Convention provides: 27

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

35. As pecuniary damage the second applicant sought EUR 3,633.64, corresponding to costs awarded to judge K.-P. B. by the Austrian courts. It further requested reimbursement of the 50,000 Austrian schillings (EUR 4,890.52) paid to K.-P. B. by virtue of the court sentence, and of EUR 1,800.80 for the publication of the judgment in its newspaper. It argued that this sum corresponds to its fees for publications in its newspaper at the relevant time and joined a copy of its price-list. The first applicant sought EUR 7,000 in respect of non-pecuniary damage for loss of reputation resulting from the judgment against him and, as pecuniary damage, EUR 152.61 for court fees he had to pay in respect of the domestic proceedings. 28

36. As regards the claims for pecuniary damage, the Government argued that the second applicant's claim for the costs of the publication of the judgment was not sufficiently substantiated, as, in their view, reference to the price list for advertisement space in their newspaper was not conclusive. In respect of non-pecuniary damage, the Government submitted that the first applicant had failed to substantiate his claim, as a mere reference to awards in other cases was not sufficient. 29

37. Having regard to the direct link between the second applicants' claim concerning reimbursement of K.-P. B.'s costs in the domestic proceedings, the compensation it had to pay to him and the violation of Article 10 found by the Court, the second applicant is entitled to recover the full amount. The same applies for the cost order issued against the first applicant in the amount of EUR 152.61. As regards the second applicant's claim for reimbursement of the costs of the publication of the judgment in its newspaper, the Court observes that the publication has actually taken place, that it was the consequence of the judgment in respect of which the Court has found a violation of Article 10 and that the second applicant has shown sufficiently how it calculated the amount which, in itself, does not appear unreasonable. Therefore, the Court also awards this claim in full. Accordingly, under the head of pecuniary damages it awards EUR 152.61 to the first applicant and EUR 10,324.96 to the second applicant. 30

38. As regards the first applicant's claim for non-pecuniary damage, the Court considers that his conviction entered in the criminal record entailed adverse effects and awards him, on an equitable basis, EUR 5,000 under the head of non-pecuniary damage (see Scharsach and News Verlagsgesellschaft v. Austria, no. 39394/98, § 51, ECHR 2003-XI; and, mutatis mutandis, Nikula v. Finland, no. 31611/96, § 65, ECHR 2002-II). 31

B. Costs and expenses

39. The second applicant sought reimbursement of EUR 3,971.24, exclusive of turnover tax, for costs and expenses incurred in the domestic proceedings. It further requested EUR 4,956, exclusive of turnover tax, for costs and expenses incurred in the Strasbourg proceedings. 32

40. The Government submitted that the costs claimed were excessive. As regards the costs claim for the domestic proceedings, they submitted that one request for adjournment of the proceedings, made by the second applicant for which EUR 30.81 were claimed, cannot be considered a step necessary in proceedings attempting to prevent the violation of the Convention found and should therefore not be granted by the Court. As regards the Convention proceedings, the Government argued that the basis for calculation was too high and that when the applicants submitted 33

their claims under Article 41, they merely re-submitted a compilation of claims they had already submitted earlier. Claiming EUR 991.30 for that step only was excessive. In their view an amount of EUR 2,173.95 for costs incurred in the Convention proceedings was justified.

41. The Court finds the claim for costs incurred in the domestic proceedings reasonable and awards the full amount of EUR 3,971.24. As regards the Convention proceedings the Court, making an assessment on an overall basis and having regard to awards in comparable cases, awards 4,000 EUR under this head. 34

C. Default interest

42. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points. 35

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 10 of the Convention;

2. Holds

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 152.61 (one hundred fifty two euros and sixty one cents) to the first applicant and EUR 10,324.96 (ten thousand three hundred twenty four euros and ninety six cents) to the second applicant in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros) to the first applicant in respect of non-pecuniary damage;

(iii) EUR 7,971.24 (seven thousand nine hundred seventy one euros and twenty four cents) to the second applicant in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. Dismisses the remainder of the applicants' claim for just satisfaction.